



6712-01

FEDERAL COMMUNICATIONS COMMISSION

[DA 14-249]

Notice of Suspension and Commencement of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the “Bureau”) debars Bryan J. Cahoon from the schools and libraries universal service support mechanism (or “E-Rate Program”) for a period of three years. The Bureau takes this action to protect the E-Rate Program from waste, fraud, and abuse.

DATES: Debarment commences on the date Mr. Bryan J. Cahoon receives the debarment letter or **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, whichever date comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Joy M. Ragsdale, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4-C330, 445 12th Street, SW., Washington, DC 20554. Joy Ragsdale may be contacted by telephone at (202) 418-1697 or by email at Joy.Ragsdale@fcc.gov. If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Chief, Investigations and Hearings Division, by telephone at (202) 418-1420 and by email at Terry.Cavanaugh@fcc.gov.

SUPPLEMENTARY INFORMATION: The Bureau debarred Mr. Bryan J. Cahoon from the schools and libraries service support mechanism for a period of three years pursuant to 47 CFR 54.8. Attached is the debarment letter, DA 14-249, which was mailed to Mr. Cahoon and released on February 24, 2014. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. In addition, the complete text is available on the FCC’s Web site at <http://www.fcc.gov>. The text may also be purchased from the Commission’s duplicating inspection and

copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY-B420, Washington, DC 20554, telephone (202) 488-5300 or (800) 378-3160, facsimile (202) 488-5563, or via email <http://www.bcpweb.com> .

FEDERAL COMMUNICATIONS COMMISSION.

Theresa Z. Cavanaugh,
Chief, Investigations and Hearings Division, Enforcement Bureau

February 24, 2014

DA 14-249

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
AND EMAIL

Mr. Bryan J. Cahoon

Register Number 95443-038

FMC Devens

Federal Medical Center

P.O. Box 879

Ayer, MA 01432

Re: Notice of Suspension and Initiation of Debarment Proceedings

FCC Case No. EB-IHD-13-00010969

Dear Mr. Cahoon:

The Federal Communications Commission (Commission) has received notice of your conviction for fraud and theft of federal funds in violation of 18 U.S.C. 666(a)(1)(A) in connection with the federal schools and libraries universal service support mechanism (E-Rate program).¹ Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from participating in activities associated with the E-Rate program. In addition, the Enforcement Bureau (Bureau) hereby notifies you that the Bureau will commence E-Rate program debarment proceedings against you.²

I. Notice of Suspension

The Commission has established procedures to prevent persons who have “defrauded the government or engaged in similar acts through activities associated with or related to the [E-Rate program]” from receiving the benefits associated with that program.³ The statutory provisions and Commission rules relating to the E-Rate program are designed to ensure that all E-Rate funds are used for their intended purpose.⁴ Sections 54.503 and 54.504 of the Commission’s rules provide that an eligible entity must seek competitive bids for all services eligible for support and must comply with all applicable

¹ Any further reference in this letter to “your conviction” refers to your guilty plea in United States v. Cahoon, Criminal Docket No. 1:13-cr-10188-RWZ-1, Plea Agreement (D. Mass. filed June 28, 2013) (Plea Agreement).

² 47 CFR. 54.8; 47 CFR 0.111 (delegating to the Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the E-Rate program in 2003. See Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (Second Report and Order) (adopting Section 54.521 to suspend and debar parties from the E-Rate program). In 2007, the Commission extended the debarment rules to apply to all federal universal service support mechanisms. Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (Program Management Order) (renumbering Section 54.521 of the universal service debarment rules as Section 54.8 and amending subsections (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

³ Second Report and Order, 18 FCC Rcd at 9225, para. 66; Program Management Order, 22 FCC Rcd at 16387, para. 32. The Commission’s debarment rules define a “person” as “[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.” 47 CFR 54.8(a)(6).

⁴ NEC-Business Network Solutions, Inc., Notice of Debarment and Order Denying Waiver Petition, 21 FCC Rcd 7491, 7493, para. 7 (2006).

state and local competitive bidding requirements.⁵ Furthermore, the E-Rate program requires applicants to solicit services based on a fair and open competitive bidding process.⁶

On June 28, 2013, you pleaded guilty to one count of fraud and theft of federal funds in connection with the E-Rate program while employed both as the Director of the Information Technology Department (IT Department) for the City of Lawrence, Massachusetts and also as a city subcontractor through your company, Networks@Home, LLC (Networks@Home).⁷ As head of the IT Department, your responsibilities included preparing requests for proposals, reviewing and identifying the lowest qualified bids submitted in response to requests for proposal, as well as submitting final proposals to the City of Lawrence's IT Purchasing Department to certify compliance with Massachusetts's procurement laws.⁸

From early 2008 through December 2009, the City of Lawrence received federal grants of over \$76 million, including approximately \$2.3 million in E-Rate funds, to improve the network and technological infrastructure of the city's schools and libraries.⁹ During that same period, you orchestrated a scheme to circumvent the state's procurement requirements that provided bidding information and

⁵ 47 CFR 54.503, 54.504(a)(1)(vi); see Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078-80, paras. 480-81 (1997) (subsequent history omitted) (finding that without competitive bidding requirements, the applicant may not receive the most cost-effective services); see also Lazo Technologies, Inc., Order on Reconsideration, 26 FCC Rcd 16661, 16664, para. 7 (2011).

⁶ 47 CFR 54.503(a). The Commission has upheld Universal Service Administrative Company (USAC) decisions that found applicants and service providers violated the Commission's fair and open competitive bidding requirements and E-Rate program rules. See Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., SLD Nos. 321479, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26408-09, paras. 1-4 (2003); see also Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service, Order, 16 FCC Rcd 4028, 4032-33, para. 10 (2000).

⁷ See Plea Agreement at 1, 17; United States v. Cahoon, Criminal Docket No. 1:13-cr-10188-RWZ-1, Information at 1 (D. Mass. filed June 19, 2013) (Information); see also UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF MASSACHUSETTS, News, Former Lawrence IT Director Pleads Guilty to Fraud and Theft, Aug. 14, 2013, at <http://www.justice.gov/usao/ma/news/2013/August/CahoonBryanPleaPR.html> (Press Release).

⁸ Information at 2.

⁹ Id. at 3.

instructions to your friends and business associates, who were awarded at least eight contracts with the city totaling \$178,555.¹⁰

You also hired friends and associates to perform cabling and rewiring work for the city as interns for the IT Department and then, through Networks@Home and another company for which Networks@Home was a subcontractor, billed the City of Lawrence for that work at inflated rates.¹¹ As a result, the city was double-billed for the same work.¹² At least a portion of the funds that your friends and business associates and Networks@Home received as a result of these schemes were E-Rate program funds.¹³

On December 17, 2013, the United States District Court for the District of Massachusetts sentenced you to serve 12 months and a day in prison followed by a one-year period of supervised release.¹⁴ In addition, the court ordered you to pay \$465,000 in restitution and a \$100 special assessment.¹⁵

Pursuant to section 54.8(b) of the Commission's rules,¹⁶ upon your conviction for theft of E-Rate funds, the Bureau is required to suspend you from participating in any activities associated with or related to the E-Rate program, including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.¹⁷

¹⁰ Id. at 3–5.

¹¹ Id. at 2–3, 13–16.

¹² Id. at 5.

¹³ Id. at 13–14.

¹⁴ United States v. Cahoon, Criminal Docket No. 1:13-cr-10188-RWZ-1, Judgment at 2–3 (D. Mass. filed Dec. 17, 2013).

¹⁵ United States v. Cahoon, Criminal Docket No. 1:13-cr-10188-RWZ-1, Order of Restitution (D. Mass. filed Dec. 17, 2013). This restitution order includes \$333,306.49 payable to USAC.

¹⁶ 47 CFR 54.8(a)(4); see Second Report and Order, 18 FCC Rcd at 9225–27, paras. 67–74.

¹⁷ 47 CFR 54.8(a)(1), (d).

Your suspension becomes effective upon either your receipt of this letter or its publication in the Federal Register, whichever comes first.¹⁸

In accordance with the Commission's suspension and debarment rules, you may contest this suspension or the scope of this suspension by filing arguments, with any relevant documents, within thirty (30) calendar days of your receipt of this letter or its publication in the Federal Register, whichever comes first.¹⁹ Such requests, however, will not ordinarily be granted.²⁰ The Bureau may reverse or limit the scope of a suspension only upon a finding of extraordinary circumstances.²¹ The Bureau will decide any request to reverse or modify a suspension within ninety (90) calendar days of its receipt of such request.²²

II. Initiation of Debarment Proceedings

In addition to requiring your immediate suspension from the E-Rate program, your conviction is cause for debarment as defined in section 54.8(c) of the Commission's rules.²³ Therefore, pursuant to section 54.8(b) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.²⁴

As with the suspension process, you may contest the proposed debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within thirty (30) calendar days

¹⁸ Second Report and Order, 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

¹⁹ 47 CFR 54.8(e)(4).

²⁰ Id.

²¹ 47 CFR 54.8(f).

²² Second Report and Order, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), (f).

²³ "Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism." 47 CFR 54.8(c). Associated activities "include the receipt of funds or discounted services through [the federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the federal universal service] support mechanisms." Id. 54.8(a)(1).

²⁴ Id. 54.8(b).

of receipt of this letter or its publication in the Federal Register, whichever comes first.²⁵ The Bureau, in the absence of extraordinary circumstances, will notify you of its decision to debar within ninety (90) calendar days of receiving any information you may have filed.²⁶ If the Bureau decides to debar you, its decision will become effective upon either your receipt of a debarment notice or publication of the decision in the Federal Register, whichever comes first.²⁷

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the E-Rate program for three years from the date of debarment.²⁸ The Bureau may set a longer debarment period or extend an existing debarment period if necessary to protect the public interest.²⁹

Please direct any response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554 and to the attention of Joy M. Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554 with a copy to Theresa Z. Cavanaugh, Division Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All messenger or hand delivery filings must be submitted without envelopes.³⁰ If sent by commercial overnight mail (other than U.S. Postal Service (USPS) Express Mail and Priority Mail), the response must be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by USPS First Class, Express Mail, or Priority

²⁵ Second Report and Order, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

²⁶ Second Report and Order, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

²⁷ 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. Id. 54.8(f).

²⁸ Second Report and Order, 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), (g).

²⁹ 47 CFR 54.8(g).

³⁰ See FCC Public Notice, DA 09-2529 for further filing instructions (rel. Dec. 3, 2009).

Mail, the response should be addressed to Joy Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554, with a copy to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554. You shall also transmit a copy of your response via e-mail to Joy M. Ragsdale, Joy.Ragsdale@fcc.gov and to Theresa Z. Cavanaugh, Terry.Cavanaugh@fcc.gov.

If you have any questions, please contact Ms. Ragsdale via U.S. postal mail, e-mail, or by telephone at (202) 418-1697. You may contact me at (202) 418-1553 or at the e-mail address noted above if Ms. Ragsdale is unavailable.

Sincerely yours,

Theresa Z. Cavanaugh

Chief

Investigations and Hearings Division

Enforcement Bureau

cc: Johnnay Schrieber, Universal Service Administrative Company (via e-mail)

Rashann Duvall, Universal Service Administrative Company (via e-mail)

William F. Bloomer, United States Attorney's Office, District of Massachusetts (via e-mail)

